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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/751,530

01/06/2004

Junichi Komagata

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EXAMINER

SOL, ANTHONY M

ART UNIT

PAPER NUMBER

2465

MAIL DATE

DELIVERY MODE

06/30/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/751,530

Applicant(s)

KOMAGATA ET AL.

Examiner

ANTHONY SOL

Art Unit

2465

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 May 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 27-48.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Jayanti K. Patel/
Supervisory Patent Examiner, Art Unit 2465

/A. S./
Examiner, Art Unit 2465

Continuation of 11. does NOT place the application in condition for allowance because: The applicant argues beginning on pg. 8 of Remarks that Li fails to disclose presence or absence of a real time packet request by detailing how each steps of figs. 5, 6, and 8 do not meet the aforementioned limitation. Consequently, the applicant argues that Li fails to disclose confirming presence or absence of a real time packet request. The applicant likewise argues on pg. 12 that Li does not disclose confirming presence or absence of a non-real time packet request.

The examiner respectfully disagrees. While the applicant's argument points out various steps of Li's fig. 8, it fails to address step 207 which contains a "ANY HIGH PRIORITY PACKETS?" question to be decided (claimed "confirming presence or absence of a real time packet request" wherein "HIGH PRIORITY PACKET" is mapped to "real time packet") (see col. 13, lines 52-56, "The steps of selecting and forwarding high priority packets may be performed as a single step (e.g. if there are any queued high priority packets, selecting and forwarding the queued high priority packet with the smallest finish time) as indicated by 207"). Whether a packet is a high priority or low priority (see col. 13, lines 38-40) is itself a "request commanding a stream transmitting portion to schedule a transmission of a real time packet" as claimed because Li as cited above discloses that "if there are any queued high priority packets, selecting and forwarding the queued high priority packet."

Likewise, the applicant fails to address step 211 of fig. 8 which contains a "ANY LOW PRIORITY PACKETS?" question to be decided (claimed "confirming presence or absence of a non-real time packet request") wherein "LOW PRIORITY PACKET" is mapped to "non-real time packet") (see, col. 13, lines 56-60, "and the step of selecting and forwarding the low priority packet may also be performed as a single step (e.g. if there are any queued low priority packets, selecting and forwarding the queued low priority packet with the smallest finish time) as indicated by 211"). Whether a packet is a high priority or low priority (see col. 13, lines 38-40) is itself a "request commanding said stream transmitting portion to schedule a transmission of a non-real time packet" as claimed because Li as cited above discloses that "if there are any queued low priority packets, selecting and forwarding the low priority packet."

Therefore, the examiner maintains that Li discloses the limitations of the independent claims 27 and 36.